

New Mexico Compilation Commission

45-2-103. Share of heirs other than surviving spouse.

A. Any part of the intestate estate not passing to a decedent's surviving spouse pursuant to Section [45-2-102](#) NMSA 1978, or the entire intestate estate if there is no surviving spouse, passes in the following order to the individuals who survive the decedent:

- (1) to the decedent's descendants by representation;
- (2) if there is no surviving descendant, to the decedent's parents equally if both survive, or to the surviving parent if only one survives;
- (3) if there is no surviving descendant or parent, to the descendants of the decedent's parents or either of them by representation;
- (4) if there is no surviving descendant, parent or descendant of a parent, but the decedent is survived on both the paternal and maternal sides by one or more grandparents or descendants of grandparents:
 - (a) half to the decedent's paternal grandparents equally if both survive, to the surviving paternal grandparent if only one survives, or to the descendants of the decedent's paternal grandparents or either of them if both are deceased, the descendants taking by representation; and
 - (b) half to the decedent's maternal grandparents equally if both survive, to the surviving maternal grandparent if only one survives, or to the descendants of the decedent's maternal grandparents or either of them if both are deceased, the descendants taking by representation; and
- (5) if there is no surviving descendant parent, or descendant of a parent, but the decedent is survived by one or more grandparents or descendants of grandparents on the paternal but not the maternal side, or on the maternal but not the paternal side, to the decedent's relatives on the side with one or more surviving members in the manner described in Paragraph (4) of this subsection.

B. If there is no taker under Subsection A of this section, but the decedent has:

- (1) one deceased spouse who has one or more descendants who survive the decedent, the estate or part thereof passes to that spouse's descendants by representation; or
- (2) more than one deceased spouse who has one or more descendants who survive the decedent, an equal share of the estate or part thereof passes to each set of descendants by representation.

C. For purposes of Subsection B of this section, the term "deceased spouse" means an individual to whom the decedent was married at the individual's death, and does not include a spouse who was divorced from, or treated pursuant to Section [45-2-802](#) or Section [45-2-804](#) NMSA 1978 as divorced from, the decedent at the time of the decedent's death.

History: 1953 Comp., § 32A-2-103, enacted by Laws 1975, ch. 257, § 2-103; 1977, ch. 121, § 3; repealed and reenacted by Laws 1993, ch. 174, § 6; 2011, ch. 124, § 10.